

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

BENJAMIN NEWSOME, Administrator of
the Estate of Joshua Johnson

Plaintiff,

v.

Civil Action No. 2:14cv94

MATTHEW WATSON and MATHEW WILLIAMS,

Defendants.

MOTION TO DISMISS COUNT I OF THE SECOND AMENDED COMPLAINT
PURSUANT TO RULE 12(b)(6)

Defendants Matthew Watson and Mathew Williams, by counsel, move to dismiss Count I of the Second Amended Complaint herein pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure on the ground that it fails to state a claim against them on which relief could be granted, more specifically as follows:

1. Violations of "safety rules of police procedure" do not state claims under the Fourth Amendment.
2. Negligence is not the test of liability for a violation of the Fourth Amendment under 42 U.S.C. §1983.
3. Allegations about how the officers conducted themselves before the use of force are irrelevant and cannot be used to attack the use of force.
4. Allegations that the officers violated procedures or safety rules in a way that created or manufactured a situation in which one of them used deadly force do not state a claim for violation of the Fourth Amendment.
5. The Fourth Amendment does not provide a person who is being arrested a right to a means of "egress".

6. The alleged violation by Watson in firing his weapon while Williams was in the line of fire is irrelevant to plaintiff's claim, because any such safety rule would exist to protect third parties, not plaintiff's decedent.

7. The allegations about Williams are too vague to allow the court or the defendants to know where Williams was at the moment of the use of deadly force and too vague to allow the court to conclude that plaintiff's claim against either Watson or Williams present a plausible claim of constitutional violation.

WHEREFORE, defendants Matthew Watson and Mathew Williams pray the court will dismiss Count I of the Second Amended Complaint with prejudice and award them judgment thereon.

MATTHEW WATSON
MATHEW WILLIAMS

_____/s/_____
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CERTIFICATION

I hereby certify that on this 7th day of July, 2014, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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